No. 586 and 601.

Motion Papers for P. E.

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Supreme Court of the United States

OF THE OCTOBER TERM, A. D. 1897.

No. 586.

JOSEPH KIPLEY.
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS
ex rel. EDWARD C. AKIN, Attorney General,
Defendant in Error.

OF THE OCTOBER TERM, A. D. 1897.

No 601.

JOSEPH KIPLEY,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS
ex rel. EDWARD C. AKIN, Attorney General,
Defendant in Error.

MOTIONS WITH SUGGESTIONS.

CHARLES S. THORNTON,
Attorney for Plaintiff in Error.

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Defendant in Error.

MOTIONS WITH SUGGESTIONS.

I.

We make the preliminary objection to the consideration, before the hearing, of the motion to dismiss that it is premature. The record has not yet been printed, and

a reference to a voluminous transcript of record would be necessary thereto.

National Bank v. *Insurance Co.*, 10 Otto. 43.

II.

We have taken out two writs of error upon the same record. The first writ of error was taken out on January 19, 1898, and the cause was subsequently docketed in this court as No. 586 of the October Term, A. D. 1897. Thereupon the defendant in error by his counsel moved to dismiss for the reason that no Federal question was raised or involved in the record. The learned counsel in their brief insist that for the reason that a motion for a rehearing was pending when we sued out the writ of error that its allowance was premature. But since then and on February 4, 1898, the Supreme Court of Illinois denied the petition for rehearing; therefore we first come here now and ask on the part of the plaintiff in error for leave to file instanter a supplement to the transcript of record already filed in said cause No. 586, showing the proceedings had in said cause in that court, so as to show that the said petition for rehearing has been denied and that the judgment specified in said writ of error is now in full force and effect.

To avoid any question as to the premature action suggested, on our part, on February 21st, we sued out another writ of error and a transcript of record to that date has been filed and the cause docketed as No. 601 of the October Term, A. D. 1897.

We respectfully ask that the two causes No. 586 and No. 601 may be united and consolidated. In doing this we waive the necessity of notice of a motion to dismiss

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as to No. 601 and consent, if opposing counsel so desire, that the motion to dismiss with the brief thereupon may apply to the record complete as it is now shown in No 601.

We submit these motions as counter to the motion to dismiss on the ground that the first writ of error was premature.

We respectfully insist that the first writ of error was not prematurely taken. For upon the entry of the order with the judgment for costs of date December 22, 1897, respondent Kipley's right to the writ from this court became complete under the Act of Congress. The petition for a rehearing was tentative, the motion to dismiss for want of jurisdiction was a repetition of a former motion. Both were optional with us.

By taking the writ of error and obtaining a supersedeas we doubtless, so far as the State Court was concerned, elected to waive all further proceedings in that court and rely upon the action of this court in review of the record ending with the judgment which was final. But as the State Court has since acted and denied the motion to dismiss as well as the petition for a rehearing, a second writ of error became necessary to bring up the subsequent rulings. By supplementing the record in 586 the two transcripts will become identical and the consolidation of the two cases will preserve all rights as to supersedeas, costs, etc. There is practically but one case to be considered on the merits.

Respectfully submitted.

CHAS. S. THORNTON,
Attorney for Plaintiff in Error.

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IN THE SUPEREME COURT OF THE UNITED STATES.
NO. 586 OF THE OCTOBER TERM, A. D. 1897.

Joseph Kipley,
Plaintiff in Error,
vs.
The People of the State of Illinois *ex rel.*, Edward C. Akin, Attorney General,
Defendant in Error.

And now comes the plaintiff in error, by his said attorney, and moves the court for leave to file a supplemental transcript of the record of the proceedings had in the Supreme Court of Illinois in the cause wherein judgment was rendered, and to correct which the writ of error herein has been prosecuted so as to show that since the suing out of said writ of error, and on the 4th day of February, A. D. 1898, the court overruled the motion to dismiss and denied the petition for rehearing made therein, and for such other or further order in the premises as may be just and proper.

CHAS. S. THORNTON,
Attorney for Plaintiff in Error.

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UNITED STATES OF AMERICA.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

JUNE TERM, A. D. 1897.

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

Proceedings had before the Honorable the Supreme Court of the State of Illinois, begun and held at Springfield, to wit, on the first Tuesday in the month, being the first day of February, A. D. 1898.

Present: JESSE J. PHILLIPS, Chief Justice; ALFRED M. CRAIG, Justice; JACOB W. WILKINS, Justice; BENJAMIN D. MAGRUDER, Justice; DAVID J. BAKER, Justice; JOSEPH N. CARTER, Justice; JAMES H. CARTWRIGHT, Justice; E. A. BAXTER, Sheriff; A. D. CADWALLADER, Clerk.

Be it remembered that in that certain cause entitled as follows:

The People of the State of Illinois, on the relation of Edward C. Akin, Attorney General,
vs.
Joseph Kipley, Superintendent of Police in the City of Chicago, and Adolph Kraus, Hempstead Washburne and Dudley Winston, Civil Service Commissioners.
— *Mandamus.*

The proceedings wherein were heretofore, to wit, on the first day of June, A. D. 1897, commenced and first had, when on said day came, the petitioners herein by the Attorney General, and moved the court for leave to file a petition for mandamus herein: Further proceedings were had herein as follows, to wit:

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An order was made by the court in the words and figures following, to wit:

And now on this day come the parties herein by their respective attorneys, and the court, not being sufficiently advised of and concerning the premises, the exceptions and motion of the respondent Kipley, as well as his petition for a rehearing in said cause, are each and all taken under advisement.

And be it further remembered that afterwards, to wit, on the 4th day of February, A. D. 1898, the court being then sufficiently advised of and concerning the premises, denied said motion, as well as the petition for rehearing, and thereupon an order was entered, which is in the words and figures following, to wit:

And now, on this day, come again the parties herein by their attorneys, and the respondents now present to the court a petition herein, praying the court to set aside and vacate the judgment herein, awarding a peremptory writ of mandamus against said respondents, rendered by the court at a former term; as also the judgment for cost against the said respondents, and for a judgment denying a peremptory writ of mandamus upon a rehearing as prayed in said petition, and the court, upon due consideration of said motions and petition, and being now sufficiently advised of and concerning the premises, it is ordered by the court that the motion to set aside the judgment awarding a peremptory writ of mandamus, as well the said judgment for costs and for a judgment denying a peremptory writ of mandamus, are hereby, each and all, denied, and the petition for rehearing is denied.

And be it further remembered that afterwards, to wit,

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on the 25th day of February, A. D. 1898, there was filed in the office of the Clerk of said Supreme Court an appeal bond which is in the words and figures following, to wit:

"Know all men by these presents, that we, Joseph Kipley, as principal, and William Behrer, surety, both of the City of Chicago, in the County of Cook and State of Illinois, are firmly held and bound unto The People of the State of Illinois in the sum of five hundred dollars ($500), for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors and administrators jointly, severally and firmly by these presents.

Witness our hands and seals hereto this 23d day of February, 1898.

The condition of this obligation is such, that whereas the said Joseph Kipley, as Superintendent of Police of the City of Chicago, was, by the order and judgment of the Supreme Court of Illinois, made subject to a peremptory writ of mandamus, which order and judgment was entered in said court on the 22d day of December, 1897, in that certain cause then therein depending, wherein The People of the State of Illinois, on the relation of Edward C. Akin, Attorney General, were the plaintiff, and the said Kipley, as such Superintendent of Police, impleaded with others, was respondent; and, whereas, on the 4th day of February, 1898, the Supreme Court of Illinois by its further entered on that day denied the petition of said Joseph Kipley for a rehearing in said cause; and, whereas, further, the above bounden Joseph Kipley has sued out a writ of error from the Supreme Court of the United States to reverse the said order or judgment of the Supreme Court of Illinois:

Now, therefore, if the above bounden Joseph Kipley shall prosecute the said writ of error to effect and answer all damages and costs if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

JOSEPH KIPLEY. [SEAL]
WILLIAM BEHRER. [SEAL]

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STATE OF ILLINOIS, }
COOK COUNTY. } ss.

Personally appeared before me this 23d day of February, 1898, the undersigned, a Notary Public in and for said county and state, the above named Joseph Kipley and William Behrer, to me personally known to be same persons who executed the above and foregoing bond and severally acknowledged the same to be his free act and deed for the uses and purposes therein mentioned.

RICHARD P. HUDD,
[SEAL] *Notary Public.*

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

William Behrer, being first duly sworn, doth on oath depose and say that he is a citizen of the United States and of the State of Illinois, resident of the City of Chicago, and that he is worth one thousand dollars ($1,000) over and above all his debts and liabilities, in property not by law exempt from execution.

And further deponeth saith not.

WILLIAM BEHRER.

Subscribed and sworn to before me this 23d day of February, 1898.

RICHARD P. HUDD,
[SEAL] *Notary Public.*

The above and foregoing bond is approved this 23d day of February, 1898.

JESSE J. PHILLIPS,
Chief Justice of the Supreme Court of Illinois."

And be it further remembered that afterwards, to wit, on the 25th day of February, A. D. 1898, together with a copy of the writ of error dated February 21, 1898, there were a citation and acknowledgment of service filed in the office of the Clerk of said Supreme Court, a copy of which citation and a copy of said copy of the writ of error are hereto attached and are respectively as follows, to wit:

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"THE UNITED STATES OF AMERICA.

To Edward C. Akin, Attorney General of the State of Illinois:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington thirty days after the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Illinois, wherein Joseph Kipley, Superintendent of Police of the City of Chicago, impleaded with Adolph Kraus, Hempstead Washburne and Dudley Winston, Civil Service Commissioners, is plaintiff in error, and The People of the State of Illinois, on the relation of Edward C. Akin, Attorney General, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not done to the parties in this behalf.

Witness the Honorable Jesse J. Phillips, Chief Justice of the Supreme Court of the State of Illinois.

Done at Springfield, Illinois, this 21st day of February, A. D. 1898.

JESSE J. PHILLIPS,
Chief Justice of the Supreme Court of the State of Illinois.

I hereby acknowledge service of above writ this 25th day of Feby, A. D. 1898.

E. C. AKIN,
Attv. Genl.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF ILLINOIS. } ss

The President of the United States of America to the Judges of the Supreme Court of Illinois, GREETING:

Because in the record and proceedings, as also in the rendition of the order or judgment in a plea that is before you in said Supreme Court between The People of the State of Illinois, on the relation of Edward C. Akin, Attorney General, the defendant in error, and Joseph Kipley, as Superintendent of Police of the City of Chicago, impleaded with Adolph Kraus, Dudley Winston

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and Hempstead Washburne, Civil Service Commissioners, plaintiff in error, wherein it is claimed certain right, title, privilege or immunity under the Constitution of the United States, and that the decision of your said court is against said right, title, privilege or immunity to the great damage of said Joseph Kipley, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf.

You are hereby commanded, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from and after this date, in the Supreme Court to be then and holden, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States at Springfield, Illinois, this 21st day of February, A. D. 1898, and of the Independance of the United States of America the one hundred and twenty-second.

[SEAL.] JAMES T. JONES,
Clerk of the United States Circuit Court in and for the Southern District of Illinois."

STATE OF ILLINOIS, }
SANGAMON COUNTY. } ss.

This is to certify that the above and foregoing is a true and correct copy of all the proceedings had since the 19th day January, A. D. 1898, and of record in the Supreme Court of the State of Illinois in that certain cause in which the People of the State of Illinois, on the relation of Edwin C. Akin, Attorney General, were the petitioners, and Joseph Kipley, Superintendent of Police of the City of Chicago, and Adolph Kraus, Hempstead

Washburne and Dudley Winston, Civil Service Commissioners were respondents, as the same appear from the records and files of my office.

In testimony whereof I hereunto set my hand and affix the seal of the said court at Springfield, Illinois, this 4th day of March A. D. 1898.

[SEAL] A. D. CADWALLADER,
Clerk Supreme Court.

IN THE SUPREME COURT OF THE UNITED STATES.

NO. 586 OF THE OCTOBER TERM, A. D. 1897.

Joseph Kipley,
Plaintiff in Error.
vs.
The People of the State of Illinois *ex rel.* Edward C. Akin, Attorney General,
Defendant in Error.

NO. 601 OF THE OCTOBER TERM, A. D. 1897.

Joseph Kipley,
Plaintiff in Error.
vs.
The People of the State of Illinois *ex rel.* Edward C. Akin, Attorney General,
Defendant in Error.

And now comes the plaintiff in error above named, and moves the court that the above entitled causes now pending, be consolidated or united for the reason that the same are writs of error based upon substantially the same record and raising the identical questions, or for such other or further order in the premises as may be just and proper.

CHAS. S. THORNTON,
Attorney for Plaintiff in Error.